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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1159

THE ANDERSON COMPANY and
ALICE SCRANTON EASTMAN ANDERSON,

Petitioners,

against

JOHN P. CHASE, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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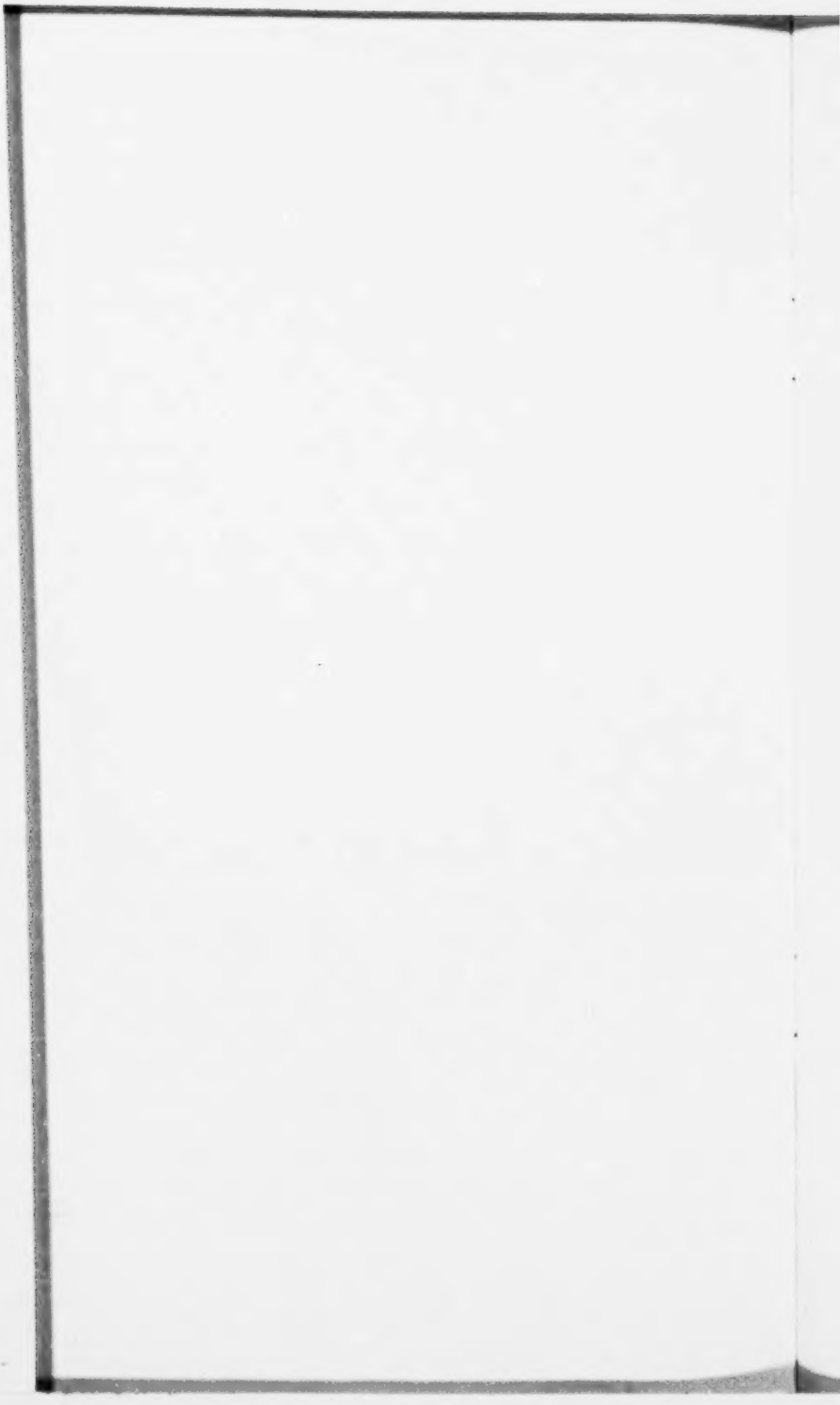

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Opinions Below

The United States District Court for the Southern District of New York rendered two opinions herein. The first, dated March 12, 1975, dismissed the complaint and is not officially reported. It appears at [1974-75 Transfer Binder] CCH Fed. Sec. Rep. ¶95,009. The second, dated June 2, 1975, denied a post trial motion and is not officially reported. Both opinions are reproduced in the appendix to

the Petition (1a-35a, 39a). The order of the Court of Appeals for the Second Circuit, affirming the District Court's order, is also reproduced in the appendix to the Petition (37a-38a).

Jurisdiction

The Judgment of the United States Court of Appeals for the Second Circuit was entered on the docket on November 18, 1975. The petition for certiorari was filed within ninety days of that date. The jurisdiction of this Court is sought to be invoked under 21 U.S.C. §1254(1).

Question Presented

Should the opinion of the District Court in a fact case affirmed *per curiam* by the Court of Appeals be reviewed in this Court?

Statement of the Case

The careful opinion of the District Court is set forth in the appendix to the Petition, pages 1a through 35a. At page 33a the summary begins as follows:

> "The plaintiffs have failed to establish by a preponderance of credible evidence or any evidence for that matter that Chase, Inc. is chargeable with any misrepresentations, oral or written, fraud or breach of duty, contractual or statutory. The issues of credibility herein are resolved in favor of the defendant. Anderson's testimony on the controverted matters is not worthy of belief."

Argument

Contrary to the implication in the "Questions Presented" by the Petition, the District Court did not decide the question of whether a private right of action for damages is maintainable under the Investment Advisers Act. At page 31a of the appendix, the Court specifically found that since there was neither fraud nor breach of duty "it is unnecessary to decide this question". The remaining questions presented in the Petition, although phrased in terms of legal questions, under the circumstances of this case are purely factual questions which have been disposed of by the decisions below.

The Petition should be denied. *See,* "Manning the Dikes", 18th Annual Benjamin N. Cardozo Lecture by the Honorable John M. Harlan, 100th Anniversary Edition, Volume 2, pp. 660 *et seq.*

Conclusion

For the reasons stated it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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